

1 MR. SHAPIRO: The purpose of this
2 provision in Paragraph 9 is, I think, simple from
3 the buyer's standpoint because the buyer asked for
4 it and fairly typical in an asset purchase order
5 is that the buyer doesn't want all the claimants
6 chasing the buyer. That's all this is about.

7 It does also provide --

8 THE COURT: This is more of a free
9 and clear provision?

10 MR. SHAPIRO: Yeah.

11 THE COURT: Then it is a service
12 block.

13 MR. GWYNNE: There is free and
14 clear language in it. If that is all it is maybe
15 it should be stricken.

16 THE COURT: No. No, because you
17 need that because it sums up by all the language
18 ahead of it referring to interest, but I'm trying
19 to read it a couple times here.

20 MR. GWYNNE: Yeah, read in
21 conjunction with 23(c) appropriately points out we
22 are compelled to provide service and then we're
23 enjoined from trying to collect from our claim.

24 MR. SHAPIRO: That is what we are

1 talking --

2 MR. KAROTKIN: Preclosing day
3 claims.

4 MR. GWYNNE: That is the home basis
5 of the termination notice as Verizon's counsel has
6 told me, and people's certification of being able
7 to terminate under Section 366.

8 THE COURT: All right. I'm going
9 to deny the modification request finding that it's
10 a provision necessary to protect the buyer's
11 purchase of the assets.

12 Mr. Gwynne, do you want to go to
13 anything else?

14 MR. GWYNNE: Yes, I do, Your
15 Honor. Paragraph 20, it's not a dollar issue for
16 my client by any means, but to the extent if this
17 is going to end up in front of another court, we
18 don't want there to be any implication here that
19 there's going to be a plaintiff in this case.

20 There's no testimony that there's
21 going to be. There's no money -- if all the money
22 is going to the DIP lender and they're not paying
23 the admin claims, then it's obvious this case is
24 going to end up in Chapter 7 shortly after Your

1 Honor approves this sale.

2 So there shouldn't be any reference
3 to 1146 and especially the fines that this is, you
4 know, contemplated that there is a plan. I mean I
5 don't think Debtors' counsel would represent to
6 Your Honor that he thinks they're going to confirm
7 a plan in this case and that they have the ability
8 to pay admin claims. And in looking at him I
9 think he's shaking his head no that they don't
10 intend to confirm a plan.

11 MR. JONAS: Can you change the name
12 of this company so that Winstar continues to have
13 a good name because if everybody is going to drag
14 everybody through the mud like in Chapter 7, like,
15 can they just drag the Apex back and forth through
16 the mud?

17 I mean we're getting Winstar's
18 name. We don't need headlines every day that
19 we're going into a bankruptcy.

20 (Following a discussion held off the
21 record:)

22 THE COURT: Go ahead, Mr. Shapiro.

23 MR. SHAPIRO: It's certainly not my
24 belief at this moment, Your Honor, that we have

1 the ability to consummate a plan.

2 On the other hand, we obviously
3 would rely principally on discussions with DIP
4 lenders, other secured creditors to see if there
5 is any basis for doing anything here. I think
6 it's unlikely, but I can't tell you with absolute
7 certainty that we cannot do it.

8 But it's really a function of
9 whether people are willing to compromise and so I
10 tend to agree with Mr. Gwynne. We don't have that
11 current likelihood, but I wouldn't completely rule
12 it out.

13 THE COURT: You know, in an effort
14 to be practical and reasonable, it does need to be
15 in there.

16 MR. SHAPIRO: I am not sure.

17 THE COURT: It does not.

18 MR. GWYNNE: It does or does not?

19 THE COURT: Does not.

20 MR. ALBALAH: Your Honor, may I
21 address that point? We haven't fully heard
22 whether there would be exposure from the buyer's
23 perspective and whether this provision protects us
24 we have entered into this transaction under the

1 assumption that there would be exposure. If we
2 take that out, there may be -- that changes the
3 deal.

4 THE COURT: What exposure would you
5 contemplate?

6 MR. ALBALAH: Transfer tax
7 exposure.

8 THE COURT: Okay.

9 MR. SHAPIRO: I would propose a
10 solution to try to address Mr. Gwynne's concerns.
11 He doesn't want there to be reference to Chapter
12 11 plans in this order because of potential
13 appeals he might take, so my suggestion would be
14 that we strike -- if the buyer was willing to
15 agree and the lenders were willing to agree, we
16 strike the language that deals with all the
17 language about Chapter 11 plans, just reference
18 1146 and say to the extent applicable and leave it
19 at that, argue about it if it ever has to come up
20 another day.

21 MR. GWYNNE: To the extent
22 applicable, if any, that would be fine.

23 MR. ALBALAH: Your Honor, may I be
24 heard on that? That's nice of them both to say if

1 applicable, but that's changing the deal.

2 (Following a discussion held off the
3 record:)

4 MR. ALBALAH: I just got finished
5 saying we haven't analyzed the issue of whether
6 there's any buyer exposure on transfer tax. I
7 don't know if there is or isn't. Nobody seems to
8 be backstopping that that was a critical element
9 of the deal.

10 As I was saying, it's easy for
11 WorldCom and the Debtor to say, if applicable, but
12 we're the ones that will be liable for this.

13 MR. GWYNNE: Your Honor, we
14 can't -- one of the problems with this case,
15 frankly, is that, you know, this whole deal and
16 this whole process is rewriting the Bankruptcy
17 Code because that's what people agree to or
18 that's, you know, what's practical.

19 I think Congress made the decisions
20 on when and whether that protection is entitled --
21 a purchaser or Debtor is entitled to that
22 protection, and I don't think we can sit here with
23 a wink and a nod and say we're going to have a
24 plan in this case, so they can get the benefit of

1 that when that's not true.

2 And no one is telling Your Honor
3 that they can do a plan. If Debtors' counsel put
4 someone on the stand to say how they're going to
5 come up with the money to pay our admin claims,
6 that's a different situation. Absent that, we
7 should do what the code says, not the deal that
8 was struck.

9 MS. MORGAN: Your Honor, one point
10 to add to this. Paula Morgan for the Debtors.

11 The taxing entities having an
12 interest in the Debtors' property were served with
13 this motion. They have not objected on this
14 basis.

15 I don't believe Mr. Gwynne
16 represents those tax entities. I don't believe he
17 has standing to raise the issue.

18 MR. GWYNNE: Your Honor, we're
19 dealing with injunctions here to protect customers
20 that the Debtor doesn't represent. I do represent
21 a client who's very concerned about this process
22 as I mentioned yesterday, and very concerned about
23 the sale order. And if we take this up on appeal,
24 we do not want to have a situation where there's

1 language in an order saying that, you know, the
2 contemplation of a plan that we're going to have,
3 implying that there's going to be a plan when
4 everyone knows darn well that that's not going to
5 happen.

6 I mean, I bet dollars to donuts this
7 case would be in Chapter 7 within in three weeks
8 after the sale closes, if that long, because
9 there's no money paying anybody after that,
10 including debts or counsel's fees.

11 THE COURT: All right. Anyone wish
12 to be heard on this?

13 MR. SHAPIRO: Let me try again,
14 Your Honor. I think 1146(c) deals with taxes.
15 And while I understand Mr. Gwynne's position, he
16 doesn't represent the taxing authorities. I feel
17 as though it's sort of a punitive attempt to try
18 to get something out of the Debtors or someone
19 else for that matter, the buyer or the lenders,
20 and I think at this point not hearing any
21 objection from the taxing authority for months,
22 Ms. Morgan tells us was served and hearing
23 objection from the buyer as to a modification that
24 I thought might be a compromise between the

1 parties, at this point I think from the Debtors'
2 standpoint, we would ask the Court to permit us to
3 have this provision go forward as we've written.

4 MR. GWYNNE: I think I made my
5 point clear why my client is concerned with it so
6 to say it's punitive, and now I'm going to get
7 something out of it at the 11th hour when Your
8 Honor says he's approving the sale is unfair and
9 it's certainly not my intention.

10 I don't care if the 1146 language is
11 in, if it says to the extent any applicable, but I
12 don't think we should have language about
13 contemplation of a plan. That type of plan
14 language, there's nothing in the record to support
15 it. I don't know why, you know, it's even a
16 matter of discussion or debate.

17 There's nothing in the record to
18 support it.

19 THE COURT: What else do you have?

20 MR. GWYNNE: On Paragraph 23, this
21 is where the Commonwealth Carriers are directed to
22 do certain things. And it refers to the
23 management agreement, which I won't deal with the
24 specific provisions in the management agreement,

1 if any, that are still offensive. But in
2 Paragraph C, it says all agreements remain in
3 effect, may not be cancelled or terminated. I
4 assume that means all prepetition agreements and
5 if there's a post-petition agreement that has not
6 been approved by Your Honor.

7 For example, we had a stipulation
8 that was scheduled for the 20th that's not
9 included in those. It's all agreements and that's
10 something.

11 And we told the purchaser if they
12 want that agreement or the Debtor if they want, if
13 the purchaser wants the benefits from that
14 agreement, you know, we're okay with that, at
15 least at this point. The agreement did have a
16 termination date which passed.

17 By I just want to be clear what
18 we're dealing with. The reason I bring this up,
19 Your Honor, is under our adequate assurance
20 stipulation as the witness testified to that the
21 usage was like 4.5, 4.6 million a month.

22 We agreed -- we're trying to work
23 with the Debtor in this case, and we agreed to
24 provide them similar services and to lower rates,

1 and we significantly lowered the monthly rate by,
2 approximately, \$1.5 million out of 49.5. That was
3 reduced.

4 In exchange for that, the Debtor was
5 supposed to assume one of our agreements and was
6 supposed to pay a net prepetition cure amount of
7 3.3 million, I think it was.

8 Well, you know, it needs to be clear
9 that if we're saying that that agreement is
10 enforceable, that's fine. Your Honor would have
11 to approve it. I assume if the purchaser wants
12 it, he will, but you will.

13 But absent that, the Debtor should
14 be -- should still be paying us the rates under
15 our current adequate assurance stipulation or the
16 purchaser, you know, for these prepayments.

17 Do you understand what I'm saying?
18 I don't know if I'm being very clear.

19 THE COURT: I understand.

20 MR. ALBALAH: May I make a point of
21 clarification? I think the understanding goes to
22 the all agreements, language in Subparagraph C on
23 Page 17, the first line is limited only to
24 prepetition agreements.

1 It is not so limited. It includes
2 all agreements pre and post-petition agreements.
3 It's my understanding from some of the testimony
4 today that some third parties have taken the
5 position that the prepetition agreements are no
6 longer extended and they're operating under
7 post-petition agreements.

8 Again, this is a critical business
9 point from the buyer's perspective to keep all of
10 the agreements going forward. So I hope that
11 serves as a point of clarification.

12 MR. GWYNNE: I don't know that that
13 solves my issue because there's two post-petition
14 agreements. We have an adequate assurance
15 stipulation, an order that's an agreement, and
16 it's an order. If that still is binding then I
17 think, you know, there's lots of people that are
18 going to be happy, including my client. I assume
19 they're taking the position that that's not
20 binding, but rather is being modified by the sale
21 order.

22 But what I'm saying is the rate --
23 we had a rate in our original contract as of the
24 time they filed. They made payments to us up

1 through August under the rate set forth in our
2 contract.

3 And then they said, Look, we don't
4 have any money. We're running out of cash. Can
5 you work with us?

6 We worked with them and they barely
7 made any payments in September. That's why we
8 have this large balance.

9 But part of the deal that was struck
10 was the reduced rate instead of 2.7 million per
11 month for long-term lease service, we reduce it to
12 1.2 in exchange for the cure of the prepetition
13 claim, the assumption of a service agreement.

14 And one of the other provisions in
15 there, Your Honor, is we agreed that the agreement
16 could be assignable to a purchaser and we would
17 provide sign-in to the purchaser even under a
18 rejected contract for a certain period of time up
19 to 18 months.

20 I mean, it made significant
21 concessions to the benefit of the Debtors and all
22 I am saying, Mr. Albalah, if he wants to benefit
23 from that contract on the rate, then they should
24 proceed with the approval before Your Honor. And

1 if we're not going to seek approval of that
2 agreement, then it is no agreement since it's
3 post-petition without the Court's approval and
4 we're back under our original stipulation and our
5 original rates.

6 MR. JONAS: We looked at this
7 company based on the amount of money that it's
8 losing now. And if they asked for a cure of \$3
9 million and they said and from this date forward
10 we're going to charge \$1.2 million forever, we
11 assumed that the cost is \$1.2 million.

12 I mean, the fact that the \$3.3
13 million didn't get paid, I mean, that's all this
14 post-petition stuff that we're not responsible
15 for. But to try now like to roll all the rates
16 back to what they were five months ago is going to
17 change the whole financial position of the
18 company.

19 MR. GWYNNE: Your Honor, we've
20 asked the Court and I understand you're not
21 making -- they will pay for charges prior to the
22 closing. That's not what I'm talking about. I'm
23 just saying what is the rate now?

24 Don't get me wrong. We object to

1 that, but I understand it's Your Honor's ruling
2 and we respect that. But with respect from the
3 closing forward, you know, what is the rate that
4 should be applied?

5 I gave Mr. Albalah a copy of the
6 agreement yesterday and explained that it was not
7 yet court approved. If you guys are interested in
8 the agreement, let me know.

9 So to say that they didn't know
10 about it is unfair. It also has been filed and
11 has been a matter of record for, approximately, 30
12 days as it was teed up for the hearing on the
13 20th.

14 So I assumed in due diligence they
15 saw it.

16 MR. ALBALAH: I never said I never
17 saw it. He said whatever the rate was yesterday
18 that is the rate. That's what the agreement
19 says.

20 I apologize. I mischaracterized
21 what Mr. Jonas was saying. I'm saying we either
22 have the original rate or if we want to seek Court
23 approval of this agreement, which we signed, the
24 Debtors have signed, it's pending before Your

1 Honor, to get the new rate, that's fine. We're
2 okay with that, too. But they can't take the new
3 rate and not give us the benefit of that bargain.

4 MR. JONAS: It's been suggested
5 that we pay the existing rate and we'll have a
6 hearing in 30 days, if we're still using services,
7 as to what the rate should be --

8 MR. GWYNNE: That is not, still not
9 appropriate. They're getting the benefit of an
10 agreement that they haven't entered into.

11 THE COURT: What is the existing
12 agreement?

13 MR. GWYNNE: The existing
14 agreement, we have a master service agreement with
15 the Debtor and part of that prepetition going in
16 effect, we have this master service agreement.
17 And we have an amendment.

18 These are prepetition contracts.
19 It's monthly use.

20 THE COURT: What agreement were you
21 providing service under yesterday?

22 MR. GWYNNE: We were providing
23 service under those accounts and an adequate
24 assurance stipulation. The adequate assurance

1 stipulation that Your Honor approved in August
2 requires them to make payments that the monthly
3 usage that the testimony was on today. They said
4 in September could they stop making payments while
5 we negotiated a new agreement.

6 THE COURT: But wouldn't it be that
7 whatever rate they were paying yesterday,
8 they're -- the agreements that are going to be
9 enforced going forward?

10 MR. GWYNNE: Your Honor, there was
11 no payments yesterday. There haven't been
12 payments.

13 THE COURT: I'm not talking about
14 the fact of payment, I'm talking about you were
15 given service yesterday?

16 MR. GWYNNE: Yes, Your Honor. And
17 they haven't been paying us the rate that they owe
18 us.

19 Now, is the rate under our original
20 contract and the adequate assurance stipulation
21 that Your Honor entered?

22 THE COURT: Right.

23 MR. GWYNNE: The other agreement
24 that we had entered into was going to give them a

1 credit of \$5 million. The Debtors filed an order
2 with the Court. That's not effective. We're
3 still under that original agreement.

4 What I don't want is the purchaser
5 trying to come in now and argue that, you know, it
6 can get the benefits of this agreement that hadn't
7 been court approved.

8 MR. SHAPIRO: I have a suggestion,
9 again, to try to figure out a practical solution
10 here and I think Mr. Gwynne is taking the position
11 that we have a contract with his clients that was
12 entered into, which effectively was intended to
13 supercede a preexisting agreement.

14 The rates are substantially lower in
15 the new contract than under the old contract.
16 That contract was put out for stipulation, but not
17 had not yesterday been heard by the Court. My
18 suggestion to the buyer was to schedule a hearing
19 on that stipulation for the next omnibus hearing
20 on January 17th.

21 Between now and then hopefully the
22 parties will reach agreement on that. In the
23 meantime they pay at what the Debtor was paying
24 because despite the fact that it hadn't been Court

1 approved, it was agreed that they would be paying
2 under the new rate until that agreement was
3 approved or not. And if it wasn't approved, we'd
4 have to go back to the old one.

5 THE COURT: Does the buyer want the
6 agreement that would be heard on January 17th?

7 MR. SHAPIRO: They don't know yet,
8 so what they are suggesting is let them pay in the
9 meantime for this, not even 30, 30-day period
10 until the 17th at the hearing, at which point
11 either they will have to decide they want it and
12 the stipulation will be entered, or they don't
13 want it and then Mr. Gwynne will have whatever he
14 asked for.

15 MR. GWYNNE: I think that's fine,
16 but between now and then they should pay us the
17 rate under our adequate assurance stipulation, the
18 one that's been approved by the Court and has been
19 in effect.

20 MR. JONAS: I could fairly get down
21 to you to a business point of view. There will be
22 no case on the 17th because if they were willing
23 to charge \$1.2 million, then they or somebody else
24 between now and then will come to that agreement.

1 We're not going to have to come to a court to
2 enforce it.

3 MR. GWYNNE: Your Honor, there were
4 other provisions to the agreement other than rate,
5 obviously, and questions about whether or not we
6 gets the benefit of those.

7 THE COURT: All right. Any other?
8 MCI?

9 MR. GWYNNE: The period -- well,
10 we -- on Page 18, I assume this -- 18(e) is
11 similar to the management agreement, doesn't
12 compel us to enter into contracts, assuming that's
13 the way Your Honor reads it, then you know, we
14 don't have an objection to that.

15 THE COURT: What are you talking
16 about now?

17 MR. GWYNNE: 18(e), this is similar
18 to the management agreement. It authorizes the
19 buyer to establish these contractual arrangements,
20 and we just wanted to be clear without looking at
21 this -- I'm getting to F, but E, Your Honor
22 authorizes to establish contracts with service
23 providers, but I assume that is an authorization
24 to negotiate with -- not to establish a contract

1 if we don't agree.

2 I think that's what Your Honor said
3 about similar management agreements.

4 THE COURT: Right.

5 MR. GWYNNE: Under F, this refers
6 to -- we have to provide services from the closing
7 date to the cutoff date. Well, we don't know if
8 there is going to be a cut off date. I think that
9 was testimony of the witness.

10 And part of it dealt with either
11 notification goes out or under the revised
12 language that was read into the record by counsel
13 for the Debtor, when the FCC authorizes them to
14 terminate, well, we don't have any control over
15 that. We don't know when that's going to happen.

16 So number one, we have a really
17 unlimited period there, but this paragraph, Your
18 Honor, as the other one, was an injunction and is
19 certainly that. We're required to provide
20 providing services to them, nothing in here about
21 our right under 366 to terminate services due to
22 the default.

23 MR. SHAPIRO: Clarification, Your
24 Honor. Just again, Mr. Gwynne may not have full

1 appreciation of the documents because, obviously,
2 we've done everything rushed. I don't want
3 anybody to misspeak.

4 The cutoff date -- actually there is
5 an end date. This is not indefinite. There's an
6 outside date of June 30, 2002. This is not
7 forever as Mr. Gwynne suggested. The buyers are
8 putting up \$60 million to make sure there's enough
9 money to cover what's been made as Mr. Gwynne
10 heard.

11 MR. GWYNNE: The outside date of
12 this injunction is June 30, 2002. I don't know
13 how, if Your Honor reads this any differently, you
14 know, but to my client, this is an injunction.

15 THE COURT: This would be -- and I
16 don't know if it's an injunction, but it's an
17 order that has finances provided for that requires
18 providers to continue service until there's a cut
19 off.

20 MR. GWYNNE: June 30, 2002.

21 THE COURT: Or sooner, if they
22 choose to disengage sooner.

23 MR. SHAPIRO: It is subject to
24 Paragraph D, Your Honor, which is the paragraph

1 that requires that buyers are responsible and
2 directed to pay on a timely basis all charges.

3 MR. GWYNNE: I think counsel for
4 the Debtor knows what I'm talking about. We have
5 these unpaid post-petition charges. No one is
6 paying for them, neither the purchaser or the
7 lenders, Your Honor, hasn't. And if this requires
8 us to continue providing services notwithstanding
9 those arrearages, what else is it, an injunction
10 joining us from exercising rights we have under
11 366.

12 I don't want to keep beating a dead
13 horse. If Your Honor is saying you're going to
14 approve it, but it's an injunction and we object
15 to it, and we want our hearing on the TRO and had
16 hoped that this issue would be addressed in
17 connection with that injunction.

18 It's also important, Your Honor,
19 because we don't want -- I can tell you if there
20 is an injunction, I know this case will, you know,
21 proceed further. And if it does, we have
22 provisions in here dealing with, you know, the
23 waiver of the ten-day stay of the sale order.

24 You know, Debtors and the purchaser,

1 no doubt, are trying to argue to the Third Circuit
2 that we are somehow mooted from the Third Circuit
3 from arguing the injunction.

4 THE COURT: I'm not so sure that
5 when read in conjunction with Paragraph D that
6 this could be considered an injunction. It's a
7 mandate to provide service in exchange for money,
8 which is different from an injunction payment.

9 Now, you've been under a temporary
10 restraining order.

11 MR. GWYNNE: Correct.

12 THE COURT: I would interpret this
13 differently. And I don't think it has to read the
14 tenant of an injunction, because there's a payment
15 coupled to it. And if there is any kind of -- and
16 I think that the payment is fully funded if
17 there's any kind of a discontinuation of the
18 payment. There is also a remedy which you
19 wouldn't have with an injunction.

20 So I think Paragraph F does two
21 things. It dissolves the need for a temporary
22 restraining order or an injunction, and it is a
23 paragraph that requires in a Chapter 11 service
24 for payment.

1 MR. GWYNNE: Are you saying, Your
2 Honor, that we cannot exercise our right to
3 terminate services based on arrearages that have
4 already accrued notwithstanding that we have that
5 right under Section 366 here, and Your Honor
6 acknowledged that in Connexus.

7 THE COURT: I think you're stopped
8 from terminating service, as I said early on in
9 this analysis, because I think you have some
10 problems with government regulators.

11 Now, you don't agree with that and
12 we've never fully heard that, but I think that I
13 can issue an injunction on the basis of that
14 evidence if we had a full hearing. And I think
15 that is, and I'm trying to give you an opportunity
16 to make your best case, that may be disagreement
17 that is your best case.

18 Maybe I should schedule an
19 injunction hearing, not tonight, and let the
20 government come forward with its evidence, and let
21 you come forward with your evidence, and then I'll
22 look at it. But I don't think, in any event, that
23 that would affect this provision.

24 And if it were issued, if the

1 injunction issued as a back, it would be a
2 backstop to this provision.

3 MR. GWYNNE: Let's say Your Honor
4 decided that under --

5 THE COURT: Because let me --

6 MR. GWYNNE: I'm sorry.

7 THE COURT: I've got this thought
8 going. Any injunction would be a continuation of
9 the temporary restraining order that you had in
10 place for the eight days. That would have to be
11 the requirements of Rule 65.

12 MR. GWYNNE: Well, Your Honor, if I
13 understand what you're saying, but to the extent
14 an injunction under case law doesn't have to be
15 called an injunction, it's anything as Your Honor
16 knows prohibiting someone from doing something.

17 THE COURT: Paragraph F, I don't
18 consider as being sought or being ordered in
19 conjunction and pursuant to Federal Rule 65.

20 MR. GWYNNE: Then I would argue,
21 Your Honor, what is the basis for compelling us to
22 provide services under the Bankruptcy Code, and
23 what other basis is there?

24 I would submit then that --

1 THE COURT: The basis is that
2 you're in a Chapter 11, and you're getting payment
3 post-petition.

4 MR. GWYNNE: But there's no section
5 in code that authorizes that, and if it's 105
6 under the Third Circuit case law, Your Honor, you
7 can't create rights that don't exist.

8 Under Section 105, there's no rights
9 in the code to compel us.

10 THE COURT: You can argue that. I
11 understand your position, but I think you have to
12 argue that on a record. And I'm willing to give
13 you that opportunity.

14 MR. GWYNNE: Your Honor, I guess I
15 don't understand, and again, if Your Honor is just
16 ruling, I don't mean to keep going back to that.

17 THE COURT: What I am saying, my
18 ruling would be that this sale order appropriately
19 has Paragraph D and F in it as well as some other
20 paragraphs that provide for remedy. And I think,
21 and I don't want to be an advocate for the
22 Debtors, but I think there's some other provisions
23 of the code that deal with contracts and some
24 other things. And I don't want to get into that.

1 But what you think it is a Rule 65
2 injunction. And you think it basically frustrates
3 your rights under 366.

4 I'll give you a chance to have that
5 discussion expeditiously because it's a discreet
6 issue.

7 MR. GWYNNE: How do we do that with
8 respect if you enter this order and they close and
9 you have a provision in the order under 26 saying
10 that the order is not stayed, and when they go
11 ahead and close, they'll argue moot negligence
12 under 366(m).

13 THE COURT: Well, you're going to
14 get another appeal of order, which you're really
15 looking -- what you are really looking for is
16 money.

17 MR. GWYNNE: An appealable order
18 has to have one that gives us time to get a stay.
19 Would Your Honor give us a ten-day stay, too, and
20 not waive us to give us a ten-day stay.

21 THE COURT: Do you want the
22 arrearages, the money, or just an argument with
23 the buyer? If you want the money, I'm going to
24 give you a vehicle to go after that, and I

1 specifically said I'll give you a hearing on an
2 injunction that trails the TRO that was entered.
3 And that will give you, in my view, a vehicle for
4 your money with no stay or anything.

5 You can't appeal a TRO, but you can
6 appeal a preliminary injunction as a right. You
7 can also attempt to appeal this.

8 I don't think what you're about is
9 trying to frustrate this transaction. And I could
10 give you, particularly under the facts of the
11 recipients of the combined service, that this
12 buyer and your folks provide, but if you want to
13 have that, you know, I could find a way to give it
14 to you.

15 MR. GWYNNE: Well, we would like
16 to.

17 THE COURT: I'm not going to
18 frustrate this order or this transaction for
19 that.

20 MR. GWYNNE: We would like to have
21 any type of relief that would give us the
22 opportunity to retain payment. We wouldn't be
23 here if we were paid today, we'd be congratulating
24 Debtors' counsel tomorrow and being glad that, you

1 know, the case was over.

2 Then, Your Honor, so you will give
3 us a hearing with respect to the injunction of
4 termination even with respect to if we're
5 providing services to the purchaser? I guess it
6 will be two hearings together, one on the --

7 THE COURT: You're subject to a
8 temporary restraining order through today.

9 MR. GWYNNE: Right.

10 THE COURT: And that can have
11 initial run of ten days and be extended ten more
12 days. And it can be ex parte.

13 Then the next step would be a
14 preliminary injunction. There is -- your argument
15 is that you can't be enjoined even under public
16 necessity with a presentation by the FCC without
17 payment.

18 MR. GWYNNE: No, that's not our --
19 well, our argument, Your Honor.

20 THE COURT: That's how you got
21 enjoined.

22 MR. GWYNNE: Well, our argument,
23 first of all, is that you can't injoin our rights
24 under Section 366. If you can injoin them in the

1 public interest, if you can do that under the Code
2 under 105, there's been no evidence of public
3 interest evidence.

4 THE COURT: This is the first day
5 of the case and if they come in, what you're
6 entitled to is money, adequate assurance.

7 MR. GWYNNE: Right.

8 THE COURT: For your assurance and
9 at some point, and they are entitled to continue
10 their bargain with you as long as they provide you
11 a payment and assurance of that payment.

12 MR. GWYNNE: Right.

13 THE COURT: Okay. I think that's
14 the issue over here. Then what happened to you in
15 this case, at some point you were going along,
16 they stopped paying you, you had accrual of
17 delinquencies, and then you got enjoined.

18 And that's your -- that's the real
19 issue that you want. I mean, again, I'm not
20 trying to advocate for the Debtors, I am --

21 MR. GWYNNE: It is no doubt the
22 injunction that's the problem.

23 THE COURT: That's the issue that
24 you have and don't agree with and think that you

1 can't be enjoined and not be paid.

2 MR. GWYNNE: Yeah, especially under
3 the procedure where there's no underlying
4 adversary proceeding. How can you show success,
5 likelihood of success of the Debtors or the FCC
6 when there's no underlying complaint to determine
7 the merits. Really what this is is a permanent
8 injunction, not that it goes on forever, it's a
9 final injunction hearing.

10 THE COURT: If you get a
11 preliminary injunction hearing, if you want one,
12 that would be if a preliminary injunction were
13 issued, that would be appealable because it
14 wouldn't affect the final order that would require
15 you to have.

16 I agree with you.

17 MR. GWYNNE: We do want a
18 preliminary injunction hearing, the sooner the
19 better. I guess I'll talk to counsel.

20 THE COURT: You all can talk about
21 it. But unless you ask for that, and we're on ten
22 days, we can extend the ten days, my view was that
23 this proposed order dissolves the need or causes
24 the need to dissolve the TRO because there's no

1 need for it any longer, because you're providing
2 service and you're getting paid.

3 It's a beautiful thing. Absolutely
4 that's what we thought.

5 THE COURT: And maybe your clients
6 will say, don't do that because we're going to
7 make enough money with these folks that we'll get
8 that money back or maybe they won't.

9 MR. GWYNNE: I have -- counsel is
10 in the courtroom.

11 THE COURT: Maybe they want to push
12 that discreet legal issue because they think it's
13 that important to them.

14 MR. GWYNNE: Unfortunately, this
15 happens in more than one case.

16 THE COURT: I understand.

17 MR. GWYNNE: At one point, we've
18 got to draw the line and say we think we have
19 rights as well. But I guess --

20 THE COURT: So I'm going to leave F
21 in finding that it's within the authority on
22 approving a sale outside the ordinary course and
23 that the entire transaction, as I said before, is
24 as recited in the order, and then I'll give you a

1 preliminary injunction hearing.

2 MR. GWYNNE: That is fine, Your
3 Honor.

4 THE COURT: Which will be a backup
5 to this provision, because if you appeal, this
6 provision may be stricken and the injunction may
7 stick or this provision may stick, and the
8 injunction may be found to have been an improbable
9 issue.

10 MR. GWYNNE: If you are saying this
11 dissolves the TRO, fine. There won't be a TRO
12 then.

13 I win, they'll appeal.

14 I only have two more comments.

15 THE COURT: What I will do is what
16 I said is I'm not going to waive, I'm going to
17 keep the ten-day waiver in there, because this is
18 one of those deals that if you don't get it down
19 immediately, the urgency of keeping this at a
20 going -- keep the values as a going concern, the
21 buyer -- as the buyers said, requires that in my
22 view.

23 MR. GWYNNE: They said they don't
24 know if they can close tomorrow. If Your Honor

1 would give us two days.

2 MR. SHAPIRO: We did not say that.

3 MR. GWYNNE: They didn't know if
4 they would close tomorrow.

5 MR. SHAPIRO: I had made a
6 representation with buyers' counsel. We didn't
7 work all through the night and spend a whole day
8 here not to close first thing tomorrow morning.

9 MR. ALABLAH: We'll close tonight.

10 THE COURT: My understanding is
11 that you're prepared to close tomorrow.

12 MR. SHAPIRO: Correct.

13 MR. GWYNNE: All the more reason
14 then that we would need a brief. Your Honor could
15 be denying us the ability to appeal a number of
16 carriers.

17 THE COURT: I understand, but under
18 the case law, and I'll enter an order explaining
19 more reasons for allowing this order to go in, but
20 there is precedent that says when the transaction
21 requires expediency to hold it together, so it has
22 a value that's appropriate.

23 MR. GWYNNE: I am aware of the
24 precedent and aware of some Circuit Court appeals

1 saying that bankruptcy and District Courts should
2 be very careful before entering orders that
3 effectively preclude parties from appealing. I
4 think that's what would happen here.

5 MR. GWYNNE: But my last comment
6 in Paragraph 24 on Page 19, it says that the
7 management --

8 THE COURT: I apologize. Judges
9 aren't going to care about all these people trying
10 to pick up their telephone.

11 MR. GWYNNE: That is the way Your
12 Honor tees up the issue. The way we see the issue
13 is it's a dispute between whether the bank gets
14 the proceeds or whether they should come to us, or
15 to pay our arrearages. We think they can come to
16 us, we don't want to terminate service just to
17 terminate service. We're doing it because we have
18 the right under the Code and we haven't been paid,
19 and we should be paid.

20 We shouldn't be financing this
21 bankruptcy case. Mr. Karotkin's client, the
22 lenders, they agreed to it voluntarily. They
23 threw this 160 million down the drain. We're
24 forced to provide services under Section 366.

1 MR. KAROTKIN: I might add, we
2 agreed to put financing in subject to certain
3 specific terms and conditions, and make no mistake
4 about it.

5 MR. GWYNNE: Your Honor, we're
6 forced as utilities to provide service. We didn't
7 volunteer. We shouldn't bear the loss. That's
8 the way I see it, not that these poor people have
9 to incur discontinued service. We don't want to
10 do that.

11 It's a simple thing, I am not going
12 to approve the sale unless you pay their
13 arrearages. Mr. Karotkin's client gets paid less,
14 we get paid and everyone is happy, but the
15 lenders --

16 MR. KAROTKIN: That's perfect.

17 MR. GWYNNE: Under Paragraph 24,
18 Your Honor, it says that we should refund promptly
19 to the buyer without set off or --

20 THE COURT: I don't know whether
21 you are --

22 MR. GWYNNE: Paragraph 24 on Page
23 19.

24 THE COURT: Okay.

1 MR. GWYNNE: That if they reject
2 any contractor, they'll make these prepayments
3 that are required under the management agreement.
4 That if they reject the contract, we have to give
5 them back any unused portion of the prepayment.

6 And you know, the concern, there
7 again, Your Honor, is yeah, of course, we'll give
8 the unused portion if we've paid everything that
9 is accrued.

10 MR. ALBALAH: Your Honor, I think
11 that sort of speaks for itself. Whatever -- go
12 ahead.

13 MR. GWYNNE: No, if you are going
14 to agree with me.

15 MR. SHAPIRO: I'm just pointing out
16 to Mr. Gwynne that what it says is they have to
17 pay back the unused portion of such prepaid, and
18 in the event of any dispute with respect to which
19 he's obviously contemplating, the buyer --

20 MR. ALBALAH: Is Mr. Gwynne
21 suggesting that to the extent IDT prepays,
22 terminates and IDT is due a refund, MCI WorldCom
23 should not remit that refund until the preclosing
24 arrears is paid?

1 MR. GWYNNE: No.

2 MR. ALBALAH: Okay.

3 MR. GWYNNE: I am saying if there's
4 anything that accrues under this order, you know,
5 like it or not, this order from the closing until
6 the rejection, if there are things that accrue in
7 that time period and they haven't been paid, when
8 they demand a deposit back, because the bill
9 hasn't been issued, that we have the right to pay
10 them. That that's not considered --

11 THE COURT: I agree with that.

12 MR. GWYNNE: That's all.

13 THE COURT: I think that is what it
14 meant to say.

15 MR. ALBALAH: I think we all agree.

16 MS. SILVERSTEIN: Your Honor,
17 Laurie on behalf of affiliates of SBC
18 Communication. I need to take you back to Page
19 18, which is Paragraph 23(d).

20 Your Honor, the bottom of Page 17,
21 it says, "The Buyer shall be responsible for and
22 is directed to pay on a timely basis, all charges
23 incurred for services used by the Debtors", et
24 cetera.

1 The next sentence says, "The rates
2 charged by Service Providers for such services
3 shall not exceed the rates for those services in
4 effect as of the date of this Sale Order."

5 I assume that doesn't mean that if
6 an agreement provides that a rate increases or a
7 tariff provides that a rate increases that we're
8 not entitled to those increases, but I want to
9 make certain.

10 THE COURT: You're correct. If
11 there's tariff agreements or some other
12 agreement.

13 MR. ALBALAH: No argument here.

14 MS. SILVERSTEIN: The next sentence
15 provides that, Neither the Debtors or Buyer shall
16 have any obligation or liability for services not
17 actually being utilized, and each Service Provider
18 shall, upon written notice from the Debtors and
19 the Buyer, immediately and without further charge
20 or further liability of any kind discontinue and
21 disconnect any such services.

22 Your Honor, there are two problems
23 with respect to that provision. One, Debtor has
24 and the buyer will have the ability to request a

1 termination of our services. We'll presume that
2 they're utilizing all of our services until such
3 time as they tell us to turn them off. If that's
4 not the case, then I have a big issue.

5 What I heard the testimony was that
6 they're going to pay for services under our
7 contract. We expect full payment for those
8 services and not for them to argue subsequently
9 they weren't utilizing something they told us to
10 disconnect.

11 So that's the first problem with
12 that provision.

13 The second problem is there may be
14 charges that under our tariff or under our
15 agreement, we're entitled to, when we disconnect
16 services at their request, and we think we should
17 be able to charge.

18 MR. ALBALAH: With respect to the
19 first point, the buyer agrees. Specifically the
20 utilization, we are not trying to be cute with
21 that word. Until we say we reject, we are
22 responsible post-closing through the rejection.
23 Utilization is not intended to be cute, so take
24 the provision out.

1 MR. LADDIN: Will you delete the
2 sentence?

3 MR. ALBALAH: Yeah, but the last
4 part of that sentence about discontinue disconnect
5 charges was intentional. We're not being cute,
6 we're being clear. We will pay post-closing
7 pre-rejection carriers. We will not pay any
8 termination or discontinuing charges arising from
9 that rejection.

10 That's something we believe that
11 would have been the Debtors' responsibility.
12 We're only paying the freight while the meter is
13 running, but the shut off of the meter would have
14 been paid by the Debtor any way. That's a
15 business deal.

16 MR. SILVERSTEIN: Your Honor, it's
17 part of our agreement. It's part of the
18 post-petition portion of our agreement.

19 It's -- part of the carrying freight
20 is the disconnect service when they terminate a
21 service. And I believe if they're going to pick
22 up the freight going forward, they should pick up
23 the entire freight going forward. It would
24 include whatever charges there are under the

1 agreements and under the tariffs.

2 MR. SHAPIRO: From the Debtors'
3 perspective, Your Honor, these termination charges
4 are disconnect charges that the carriers have in
5 their prepetition contracts. If a contract is
6 rejected, then that would become a prepetition
7 obligation, not a post-petition obligation. So I
8 respectfully disagree with counsel.

9 MS. SILVERSTEIN: Your Honor, that
10 issue has not been determined at all. As a matter
11 of fact, there is a motion in Subsudi (phonetic)
12 with respect to at least some termination charges,
13 although some unspecified, unnamed service
14 charges, and disconnect charges. And so I would
15 not agree that that issue is decided, and we
16 certainly believe we may very well have an
17 administrative claim.

18 But in any event, it's certainly a
19 part of the obligation going forward under these
20 agreements. The purchasers are trying to get the
21 benefit of these agreements without assuming
22 them. We have a problem with that.

23 But they're doing that and I take it
24 that Your Honor is going to permit them to do

1 that. I think this is part of the freight of
2 going forward.

3 MR. ALBALAH: Your Honor, may I be
4 heard in terms of simple big picture here? The
5 suggestion was that the buyer is somehow trying to
6 get the benefit of the contract without the
7 burden.

8 Please understand this case was
9 going to convert to Chapter 7, but for us working
10 round the clock to get a deal to get the contract
11 signed, get the money, this escrow, we are ready,
12 willing and able to close.

13 There were tremendous, tremendous
14 amounts of give and take on business points that
15 went into this business deal. We did not cause
16 the problem that the carriers got hurt. We
17 recognize their hurt, but we didn't cause that
18 problem.

19 We believe we are here to solve the
20 problem. We are preventing the customers from
21 having immediate shut off of services. We are
22 giving the carriers current pay. No, not current
23 pay, prepay.

24 So any concept of how somehow the

1 buyer should be saddled with any obligation that
2 existed before we entered the scene is just
3 foreign as a matter of concept, and it's foreign
4 as a matter of the negotiated agreement.

5 THE COURT: Well, --

6 MS. SILVERSTEIN: I'm sorry. We
7 were not a part of the negotiations, and this is
8 very different than a melt down. In a melt down
9 where we are now, we have a purchaser. It's a
10 very different situation, and this purchaser is
11 trying to get the benefit of these contracts.

12 I doubt very seriously that they're
13 going to be assuming the carrier contracts, but
14 they are going to be getting the benefit, and then
15 we'll reject them.

16 MR. ALBALAH: We are going to go in
17 and say yes, yes, yes, no, no, no. When we say
18 yes, we'll cure it and we'll assume any
19 termination liability is going forward. It's
20 typical cure. I think everyone understands that
21 it's not controversial. We're going to groom, say
22 reject, reject, reject. From closing to
23 rejection, we'll pay nothing else.

24 THE COURT: Well, the question is

1 from closing to rejection if there's a termination
2 cost, are you going to pay that?

3 MR. ALBALAH: No, because we are
4 stepping in here to carry it and to decide if
5 we're going to drop it or we're going to really
6 keep it forever. If we assume it, we'll keep it
7 forever.

8 THE COURT: What's your principal
9 of payment under the contract that it would be
10 operating on until you make that decision? That's
11 the point.

12 MR. ALBALAH: The principal of
13 payment?

14 THE COURT: Yeah. What they're
15 saying is you can't take -- and I'm just using
16 this as an example, you can't take a ten paragraph
17 contract and say, We only like Paragraph 3.

18 MR. ALBALAH: We are not assuming
19 the contract.

20 THE COURT: I understand that.
21 What are you --

22 MR. ALBALAH: How much are we
23 paying?

24 THE COURT: Right. Where are you

1 getting the number from?

2 MR. ALBALAH: We said it in here
3 several times.

4 THE COURT: You're going to pay
5 under the agreement?

6 MR. ALBALAH: The rates charged,
7 exactly right. We will pay the rates charged, the
8 "rates charged by service providers for such
9 services shall not exceed the rates for those
10 services in effect as of the date of this sale
11 order".

12 We are taking the agreement.
13 They're going to continue providing, we will pay
14 that rate.

15 THE COURT: And if there's a
16 thousand customers and 500 terminate and there's a
17 termination fee, is that part of the rate?

18 MR. ALBALAH: No. We are not
19 paying the termination fee. We are not paying the
20 discontinuation fee. We're not paying the
21 disconnect fee.

22 Conceptually we are simply saying we
23 are going to solve the problem of an orderly
24 migration, and I think if I -- if I'm not being

1 articulate, please understand me, the reason why
2 I'm saying please tell me is I want to make sure
3 everyone understands it. I say that in the spirit
4 that I don't understand the concept of anyone
5 looking to the buyer to pay a termination
6 discontinuation or disconnect fee.

7 If you understand what we're doing,
8 it's just foreign.

9 MR. JONAS: The more likely
10 scenario is SBC does business in let's say 20
11 states, you know, with Ameritech. So we may
12 decide we're going to keep Chicago and Dallas, and
13 we may decide we're not going to keep San
14 Antonio.

15 So then we say, okay, we reject San
16 Antonio. We don't think that we should be charged
17 a disconnect charge on San Antonio because we have
18 the right to disconnect the contract. The fact
19 that they have a monopoly that goes over 20 states
20 isn't our fault. That they were just one company
21 and we rejected, now we understand if we accept
22 Dallas and there's a past due on Dallas, we have
23 to cure the past due in order to keep, you know,
24 the contract past 120 days or whatever.

1 But it's -- you know, to say that
2 you've got to get penalized because you rejected
3 the contract and in any one city goes against the
4 whole spirit of the agreement.

5 MR. SHAPIRO: Your Honor, as you
6 may recall, we actually had a briefing on this
7 similar issue of this case, which hasn't been
8 ruled on yet, which is whether or not corn chronic
9 for circuits that we had previously terminated
10 during the case would constitute either unsecured
11 claims, which is the Debtors' position or whether
12 they would constitute administrative claims, which
13 was the position of the argyles.

14 I think at best they have an admin
15 claim against the estate if we do this, which is
16 their position in their papers that they filed
17 with the Court. They do not have a claim against
18 the buyer.

19 MR. SHERMAN: Andrew Sherman for
20 Qwest Corporation, Qwest Communications. I think
21 that issue, Mr. Shapiro, was an issue relating to
22 Qwest. But I reiterate the position of
23 Ms. Silverstein. If this is and if they're going
24 to get the benefit of the contract, they're going

1 to -- I mean, what Your Honor did in this order is
2 direct the service providers to comply under the
3 terms of the agreement.

4 So we're complying under the terms
5 of the agreement. We're directed to do that, but
6 we don't get the benefit of it. It just doesn't
7 make sense.

8 MR. ALBALAH: I neglected to point
9 out another fundamental thing, and please tell me
10 if I'm missing something. If we don't do this
11 deal and we walk out of the courtroom right now,
12 there will be no money to keep this company
13 alive. It will convert, whatever, but the FCC
14 very well may, as Your Honor I know has been
15 alluding to, compel the carriers from providing
16 service, whether it's 31 days, or 35 days, or
17 whatever it is.

18 MR. SHERMAN: Your Honor, what is
19 the relevance of that to whether the termination
20 charges are valid? I mean, they're going to --

21 MR. JONAS: The question that Qwest
22 is bringing up, and I'm sure that Verizon is going
23 to bring up is the same thing that SBC is bring
24 up, that there's a variety of DS-3, OC-3's, OC-1,

1 every kind of line all over the place.

2 Some of those lines are going to be
3 valid, and some, you know, are not going to be
4 valid. Now, it could have been that we would have
5 bought them from 30 different companies, but in
6 this case, the way Winstar worked, they sort of
7 concentrated and they bought it from a couple of
8 companies.

9 If we decide that we want to keep
10 the lines from New York to Boston or we want to
11 keep the lines from Boston to Dallas, okay, after
12 a certain period of time, we have to cure what we
13 owe on that line. But if we decide we don't want
14 to keep the line going from Cleveland to, you
15 know, Iowa, we shouldn't be charged a termination
16 charge.

17 It's just a contract that we are
18 rejecting. It's just a contract that we're
19 deciding not to keep, and that's the spirit of the
20 agreement.

21 MR. SHERMAN: As Mr. Jonas knows,
22 there are hard costs absorbed when you terminate a
23 circuit. There's either manual labor that has to
24 go out and actually absorb the cost of

1 termination. I don't think it's just switching a
2 switch.

3 The cost that the carrier has to
4 incur, some of it, from what I understand from
5 what my client, you know, better than I, is
6 sometimes you have to go out to a circuit. If
7 it's in collace (phonetic) space, you have to turn
8 it off.

9 MR. JONAS: It's your collace
10 space, which costs money to send personnel to do
11 that.

12 MR. ALBALAH: If the carriers would
13 prefer us not do the deal.

14 MR. JONAS: I'm not playing Russian
15 Roulette here. I don't want to play that game.

16 The spirit of the contract is the
17 contract that we keep, we pay for, and we cure.
18 The ones that we reject, we just reject. You know
19 what, what may be if they want to play it like the
20 other way, I'll play it the other way.

21 We'll pay all the termination
22 charges, but anything that we decide to accept,
23 let's forget the cure amount and then, you know,
24 that's okay with me, too, if they would rather

1 have it that way.

2 MS. SILVERSTEIN: Your Honor, this
3 purchaser is getting the benefit of these
4 contracts. This court is ordering us to perform
5 under them for the benefit of this.

6 THE COURT: No. I'm not going to
7 do that. What I'm going to do is I'm going to
8 call the providers bluff. I've worked pretty
9 diligently with everyone to try to get value out
10 of this. I'm willing to let the providers take
11 their positions.

12 And Mr. Jonas is a business man.
13 He's the only one in the courtroom making sense,
14 not the lawyers.

15 I'm not going to put him in a
16 situation where you all have sold your legal
17 arguments without the benefit of the business
18 advice of your clients.

19 I think if Mr. Jonas sat down with
20 your clients, you would find that your clients
21 would be amazed at the arguments that you're
22 making, and they'd rather talk to Mr. Jonas and do
23 a deal.

24 But what I'm going to do is I'm

1 going to reject the order as it's framed, and
2 because I see all the folks lined up, I'll just
3 agree with all your positions, and somebody will
4 be happy because you're competitors of Mr. Jonas,
5 so you'll go out in the marketplace, and you'll
6 knock heads. And the rest of you will suck wind.

7 It's too easy and Mr. Jonas will
8 save himself a lot of aggravation trying to save a
9 business. So I'm going to reject the order as
10 framed.

11 If you get something different, get
12 back to me.

13 All right. We'll be in recess.

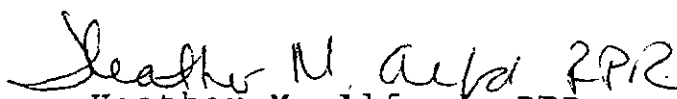
14 (Court was adjourned at 8:46 p.m.)
15
16
17
18
19
20
21
22
23
24

1 State of Delaware)
2 New Castle County)

6 CERTIFICATE OF REPORTER

8 I, Heather M. Alford, Registered
9 Professional Reporter and Notary Public, do hereby
10 certify that the foregoing record, Pages 1 to 256
11 inclusive, is a true and accurate transcript of my
12 stenographic notes taken on December 18, 2001, in
13 the above-captioned matter.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal this 27th day of December, 2001, at
17 Wilmington.

20 
21 Heather M. Alford, RPR